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LEWIS FAMILY ENTERPRISES, INC. and  
7 STEVEN ROBERT LEWIS

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

10 FORD MOTOR CREDIT COMPANY, )  
LLC, a Delaware Limited Liability )  
11 Company, )

12 Plaintiff, )

13 vs. )

14 LEWIS FAMILY ENTERPRISES, )  
INC., dba BOB LEWIS LINCOLN )  
15 MERCURY, a California corporation, )  
and STEVEN ROBERT LEWIS, an )  
16 individual, )

17 Defendants. )

18 \_\_\_\_\_ )  
19 LEWIS FAMILY ENTERPRISES, )  
INC., dba BOB LEWIS LINCOLN )  
20 MERCURY, a California corporation, )  
and STEVEN ROBERT LEWIS, an )  
21 individual, )

22 Counterclaimants, )

23 vs. )

24 FORD MOTOR CREDIT COMPANY, )  
LLC, a Delaware Limited Liability )  
25 Company; FORD MOTOR COMPANY, )  
a Delaware corporation; CAPITOL )  
26 EXPRESSWAY FORD, INC., a )  
Delaware corporation; and DOES 1 )  
27 through 10, inclusive, )

28 Counterdefendants. )  
\_\_\_\_\_ )

Case No.: C 07-03301 RS

**COUNTERCLAIM; DEMAND FOR JURY  
TRIAL**

Counterclaimants LEWIS FAMILY ENTERPRISES, INC., dba BOB LEWIS LINCOLN MERCURY, and STEVEN ROBERT LEWIS (collectively, "Counterclaimants") allege as follows:

#### **JURISDICTION AND VENUE**

1. The jurisdiction of this court over the subject matter of this action is predicated on diversity of citizenship as this civil action is between citizens of different states under 28 U.S.C. § 1332. Additionally, the amount in controversy exceeds the sum of or value of \$75,000, exclusive of interests and costs, in accordance with 28 U.S.C. § 1332.

2. Venue is proper in the Northern District of California under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this judicial district.

#### **PARTIES**

3. Counterdefendant FORD MOTOR COMPANY ("Ford") is a Delaware corporation headquartered in Dearborn, Michigan. In North America, Ford distributes and sells its motor vehicles through a dealer franchise network. Ford's automotive brands include Lincoln and Mercury.

4. Ford operates a Dealer Development Program, which has the purpose of facilitating the establishment of independent franchised dealers by allowing a participating dealership (known as a "Dealer Development Dealership") to become the sole owner of a Ford and/or Lincoln Mercury dealership corporation over a period of time. Under the Dealer Development Program, Ford funds up to ninety percent (90%) of the investment capital needed to purchase a Ford dealership, and supplies and finances the majority of Ford vehicles and parts to Dealer Development Dealerships. Over time, the operator of a Dealer Development Dealership purchases equity from Ford using the operator's share of the net profits from the dealership. The objective of the Dealer Development Program is to allow the operator of a Dealer Development Dealership to repay Ford so that the operator is ultimately able to own one hundred percent (100%) of the dealership. Through

1 the Dealer Development Program, Ford holds ownership interests in certain Ford Lincoln  
2 Mercury dealerships.

3 5. Counterdefendant FORD MOTOR CREDIT COMPANY, LLC ("Ford Credit")  
4 is a Delaware limited liability company headquartered in Dearborn, Michigan. Ford Credit  
5 is a wholly owned subsidiary of Ford. Ford Credit offers wholesale automotive financing to  
6 and through Ford's automotive dealers, including the making of loans to Ford dealers to  
7 finance the purchase of vehicle inventory (i.e., floorplan financing). The predominate  
8 share of Ford Credit's business consists of financing Ford vehicles and supporting Ford  
9 dealers.

10 6. Counterdefendant CAPITOL EXPRESSWAY FORD, INC. ("Capitol Ford") is  
11 a Delaware corporation with its principal place of business at 919 W. Capitol Expressway,  
12 San Jose, County of Santa Clara, California. Capitol Ford is an authorized Ford Lincoln  
13 Mercury dealer, and is a Dealer Development Dealership in which Ford has an ownership  
14 interest.

15 7. Counterclaimant LEWIS FAMILY ENTERPRISES, INC. (the "Corporation"),  
16 dba BOB LEWIS LINCOLN MERCURY, is a California corporation, with its principal place  
17 of business located at 911 Capitol Expressway Auto Mall, San Jose, County of Santa  
18 Clara, California. During the period from December 2003 to September 2007, the  
19 Corporation owned and operated a Ford Lincoln Mercury dealership in San Jose,  
20 California, under the fictitious business name of BOB LEWIS LINCOLN MERCURY (the  
21 "Bob Lewis dealership"). The Bob Lewis dealership is not a Dealer Development  
22 Dealership.

23 8. Counterclaimant STEVEN ROBERT LEWIS ("Lewis") is an individual who is  
24 a citizen of the State of California and a resident of Santa Clara County, California. Lewis  
25 is the president of the Corporation.

26 9. Counterclaimants do not presently know the true names and capacities of  
27 the counterdefendants sued herein as DOES 1 through 10, inclusive. Counterclaimants  
28 will seek leave of court to amend this counterclaim to allege said counterdefendants' true

1 names and capacities as soon as ascertained by Counterclaimants.

2 **GENERAL ALLEGATIONS**

3 10. In or about December 2003, the Corporation executed Lincoln and Mercury  
4 Sales and Service Agreements with Ford to establish the Corporation as an authorized  
5 dealer of Ford products and Ford Lincoln Mercury vehicles. Under the terms of these  
6 agreements, Ford and the Corporation covenanted not to engage in deceptive,  
7 misleading, or confusing business practices.

8 11. Between December 2003 and February 2004, the Corporation secured  
9 inventory financing from Ford Credit for the acquisition of new and used motor vehicles for  
10 sale and lease by the Bob Lewis dealership. The Corporation also obtained a capital loan  
11 from Ford Credit in the principal amount of \$800,000 to purchase dealership assets.

12 12. The aforementioned loans were secured by the equipment, furnishings,  
13 goods, motor vehicles, service parts, accessories, accounts, instruments, chattel paper,  
14 contract rights, and documents of the Corporation/Bob Lewis dealership. Lewis personally  
15 guaranteed the full repayment of the Corporation's obligations to Ford Credit.

16 **A. FORD'S DEALERSHIP CONSOLIDATION/REDUCTION PROGRAM**

17 13. In late August 2006, Ford commenced a Lincoln Mercury dealership  
18 consolidation/reduction program aimed at improving the fiscal health of its dealerships.  
19 Under the program, Ford offered an exit process or strategy to existing Lincoln Mercury  
20 dealers, including the Corporation.

21 14. In Fall 2006, Joe Kerley Lincoln Mercury, a Ford dealership located in San  
22 Jose, California, voluntarily resigned its sales and service agreement (i.e., franchise) with  
23 Ford under the Lincoln Mercury dealership consolidation/reduction program.

24 15. The Corporation and Sunnyvale Lincoln Mercury, a Lincoln Mercury  
25 dealership located in Sunnyvale, California, agreed to participate in the consolidation of  
26 the San Jose multipoints or San Jose regional market for Lincoln Mercury dealers.  
27 Accordingly, the Corporation proposed to operate a consolidated company dealership  
28 whereby the Corporation agreed to acquire a portion of the Lincoln Ford market assigned

1 to Joe Kerley Lincoln Mercury, and agreed to acquire a portion of Joe Kerley Lincoln  
2 Mercury's 2007 new model inventory. The Corporation's proposal for a consolidated  
3 dealership was accepted by Ford in or about November 2006.

4 16. At no time prior to or during the consolidation process did Ford indicate to  
5 Counterclaimants that the Corporation's operation of a consolidated company dealership  
6 would foreclose or preclude the Corporation from electing or availing itself of the Lincoln  
7 Mercury dealership consolidation/reduction program or the exit process offered under this  
8 program at a later date.

9 **B. THE RELOCATION OF THE BOB LEWIS DEALERSHIP**

10 17. Prior to April 15, 2007, the Bob Lewis dealership was located at 909 West  
11 Capitol Expressway Auto Mall, San Jose, County of Santa Clara, California. The  
12 Corporation subleased the 909 West Capitol Expressway Auto Mall premises from Ford  
13 Leasing Development Company, a Delaware corporation and an affiliate of Ford.

14 18. On or about November 29, 2006, the Corporation requested authority from  
15 Ford to relocate the Bob Lewis dealership from 909 West Capitol Expressway Auto Mall to  
16 911 Capitol Expressway Auto Mall, San Jose, County of Santa Clara, California, as the  
17 Corporation had procured a candidate to assume its obligation on the Ford sublease.

18 19. On or about March 20, 2007, Ford approved the Corporation's request to  
19 relocate the Bob Lewis dealership conditioned on the Corporation's renovation of 911  
20 Capitol Expressway to incorporate Lincoln and Mercury Gallery Design elements (i.e., to  
21 display the proper Lincoln Mercury signage). The Corporation would bear the cost of  
22 ordering and installing the new signage at an estimated cost of between \$10,000 to  
23 \$15,000, and at a cost of no more than \$30,000.

24 20. Shortly thereafter, the Corporation assigned its Ford sublease to Almaden,  
25 Inc., a California corporation, operated and owned, in part, by Shaun Del Grande.  
26 Accordingly, in or about April 2007, the Corporation and Ford Leasing Development  
27 Company terminated the 909 West Capitol Expressway Auto Mall sublease pursuant to  
28 the Sublease Termination Agreement executed by and between the Corporation and Ford

1 Leasing Development Company. The Corporation thereafter commenced its operation of  
2 the Bob Lewis dealership at 911 Capitol Expressway Auto Mall.

3 **C. THE CORPORATION'S SALES OUT OF TRUST CONDITION**

4 21. On or about June 5, 2007, Lewis telephoned Phil Ward ("Mr. Ward"), a  
5 Territory Sales Manager for Ford Credit, to advise the latter that a sales out of trust  
6 ("SOT") condition had occurred at the Bob Lewis dealership. The SOT condition resulted  
7 from the Corporation's failure (beginning in or about February 2007) to apply the proceeds  
8 from the sale of various Lincoln Mercury vehicles to the repayment of the financing  
9 provided by Ford Credit to the Corporation for the latter's initial acquisition of the vehicles  
10 sold. Although the SOT condition had continued for a four (4) month period preceding  
11 June 2007, Ford Credit permitted the Corporation to continue its operations (i.e., the sale  
12 of Lincoln Mercury vehicles). (Significantly, for the four (4) months preceding June 5,  
13 2007, Ford Credit failed to conduct the required monthly flooring audit, and was therefore,  
14 unaware of the SOT condition until so advised by Lewis.)

15 22. On or about that same day (June 5, 2007), Ford Credit temporarily withdrew  
16 the line of wholesale credit for the Bob Lewis dealership. As a result, on or about June 7,  
17 2007, Ford placed a "vehicle order hold" effectively precluding the Bob Lewis dealership  
18 from ordering new vehicle inventory, excepting those motor vehicles in-plant and in-transit.

19 23. On or about June 6, 2007, Steve Boldvich, a Center Operations Manager –  
20 Status for Ford Credit, wrote to the Corporation and to Lewis demanding the immediate  
21 payment of the sum total of \$969,523.55, representing the balance of the capital loan  
22 owed by the Corporation (\$268,329.39) and the outstanding balance owed by the  
23 Corporation to Ford Credit on the SOT vehicles or the vehicles which had been sold out of  
24 trust (\$701,194.16).

25 24. However, on or about June 7, 2007, Lewis met with Mr. Ward of Ford Credit  
26 to discuss the SOT condition. Mr. Ward informed Lewis that Ford Credit would continue  
27 to provide the Corporation with vehicle financing under specific guidelines to ensure the  
28 continued operation of the Bob Lewis dealership. The Corporation proceeded to work

1 with Ford Credit to repay and reduce the SOT amount or the outstanding inventory  
2 financing amount owed by the Corporation to Ford Credit.

3 25. On or about that same date (June 7, 2007), Lewis telephoned Hal (H.E.)  
4 Dewsnap ("Mr. Dewsnap"), a Regional Sales Manger/General Manager for Ford, to  
5 discuss the SOT condition. Lewis informed Mr. Dewsnap that the Corporation did not  
6 have the funds to immediately pay the sum demanded by Ford Credit.

7 **D. THE SALE OF THE BOB LEWIS DEALERSHIP**

8 26. On or about June 8, 2007, the Corporation (i.e., Lewis) was contacted by  
9 Philip A. Campisi, a Market Representation Manager for Ford, concerning the facility  
10 upgrades to 911 Capitol Expressway Auto Mall or the location of the Bob Lewis  
11 dealership. For the first time, Ford informed the Corporation that in addition to the  
12 signage upgrade, a facility renovation would also be necessary and mandatory. Ford  
13 indicated to Lewis that the Corporation would be required to bear the full \$250,000 to  
14 \$500,000 expense of such an upgrade.

15 27. Due to the Corporation's inability to bear the expense of the facility  
16 renovation newly required by Ford, Lewis contacted P.J. (Patrick) Sheehan ("Mr.  
17 Sheehan"), a Regional Marketing Representation Manager for Ford, regarding the SOT  
18 condition and the length of time needed by the Corporation to repay the financing amount  
19 due to Ford Credit. Mr. Sheehan, on behalf of Ford, explained the options available to the  
20 Corporation, including the Corporation's voluntary surrender of the Bob Lewis dealership,  
21 or a buy-sell (i.e., the sale of the dealership). Mr. Sheehan implied that of the two (2)  
22 alternatives, a buy-sell would be more favorable to the Corporation. Upon inquiry by the  
23 Corporation, Ford indicated that the Bob Lewis dealership would not qualify for the Lincoln  
24 Mercury dealership consolidation/reduction program because Joe Kerley Lincoln Mercury  
25 had already resigned its Ford dealership under the program.

26 28. Consequently, the Corporation began to explore the possible sale or  
27 termination of the Bob Lewis dealership. On or about June 14, 2007, the Corporation and  
28 Capitol Ford commenced discussions regarding the potential purchase of the Bob Lewis



1 dealership by Capitol Ford.

2       29. On or about June 18, 2007, the Corporation (via Lewis) informed Ford (by  
3 way of Mr. Sheehan) that it was exploring the possible sale of the Bob Lewis dealership,  
4 and was considering several potential buyers, including Capitol Ford. Mr. Sheehan  
5 expressed Ford's preference for the sale of the dealership to Capitol Ford, and indicated  
6 that the buy-sell process would be expedited if the Corporation elected to sell its  
7 dealership to Capitol Ford.

8       30. On or about June 20, 2007, the Corporation began preliminary and informal  
9 discussions with Shaun Del Grande ("Mr. Del Grande") for the sale of the Bob Lewis  
10 dealership to the Del Grande family. Discussions for the purchase of the Bob Lewis  
11 dealership and its assets were in the range of approximately \$300,000 to \$500,000. The  
12 buy-sell terms discussed with Mr. Del Grande were more favorable to the Corporation  
13 than those terms proposed by Capitol Ford for the purchase of the Bob Lewis dealership.

14       31. On or about June 20, 2007, Mr. Sheehan (i.e., Ford) contacted Lewis to  
15 indicate that, although Mr. Del Grande would be considered as a candidate for the  
16 purchase of the Bob Lewis dealership, Ford ultimately preferred for the Corporation to sell  
17 the dealership to Capitol Ford. Mr. Sheehan additionally indicated that because Capitol  
18 Ford was essentially pre-approved, Ford's formal approval process for the sale of the  
19 dealership to Capitol Ford would be expedited.

20       32. On or about June 20, 2007, Mr. Del Grande indicated to the Corporation that  
21 the deal as previously discussed would not make financial sense due to Ford's imposition  
22 of a \$500,000 facility upgrade requirement.

23       33. Consequently, the Corporation was left with two alternatives – either the sale  
24 of the Bob Lewis dealership to Capitol Ford or the voluntary resignation of the dealership.  
25 Because a buy-sell was preferable to the voluntary resignation of the Bob Lewis  
26 dealership, the Corporation signed a letter agreement on or before June 22, 2007, with  
27 Capitol Ford for the sale of the Bob Lewis dealership. A copy of the letter agreement is  
28 attached hereto as Exhibit A and is incorporated herein by this reference. Capitol Ford



1 and the Corporation executed the letter agreement intending to enter into a binding,  
2 written contract for the sale of the Bob Lewis dealership to Capitol Ford.

3 34. Immediately thereafter, or on or about June 22, 2007, the Corporation  
4 notified Ford Credit (i.e., Mr. Ward) of the impending sale of the Bob Lewis dealership to  
5 Capitol Ford.

6 35. On June 22, 2007, Ford Credit filed a Complaint for: (1) Breach of  
7 Wholesale Agreement; (2) Breach of Capital Loan Agreement; (3) Replevin; (4) Specific  
8 Performance; (5) Injunctive Relief; and (6) Breach of Guaranty against Counterclaimants,  
9 seeking to recover all outstanding inventory financing and capital amounts owed by the  
10 Corporation.

11 36. On June 26, 2007, Ford Credit filed an ex parte application for a writ of  
12 possession and a temporary restraining order to take possession of the Corporation's  
13 inventory, including its Lincoln Mercury automobiles. On that same date, counsel for Ford  
14 Credit provided Counterclaimants with ex parte notice.

15 37. After being so informed, Lewis contacted Ford Credit (i.e., Mr. Ward) on or  
16 about June 26, 2007, to discuss the writ of possession. Mr. Ward indicated that it would  
17 not be in the best interest of either the Corporation or Ford Credit to execute the writ of  
18 possession. Rather, Mr. Ward explained that Ford Credit was merely "getting its ducks in  
19 a row," and that it would "stand-down" or not pursue litigation during the pendency of the  
20 Corporation's buy-sell with Capitol Ford. The Corporation indicated to Ford Credit that it  
21 was continuing to pay down the SOT or the outstanding financing amount due to Ford  
22 Credit on the vehicles previously sold out of trust.

23 38. On or about June 28, 2007, Capitol Ford circulated a subsequently proposed  
24 asset purchase agreement or draft for consideration by the Corporation as pertaining to  
25 the sale of the Bob Lewis dealership. Negotiations as to this subsequently proposed  
26 agreement continued between the Corporation and Ford Credit until August 13, 2007.

27 39. On or about June 28, 2007, the Corporation advised Ford that Ford Credit  
28 was severely restricting its ability to continue its business. Ford (i.e., Mr. Sheehan)

1 reassured the Corporation that Ford would move quickly to approve the buy-sell between  
2 Capitol Ford and the Corporation, and that it did not foresee any issue which would  
3 hamper the approval process. Mr. Sheehan further indicated that although Ford  
4 recognized a customer satisfaction issue with Capitol Ford, Ford would be able to  
5 negotiate around the issue given Capitol's Ford status as a Dealer Development  
6 Dealership. Ford further suggested that the Corporation direct its service business to  
7 Capitol Ford given the agreement reached between Capitol Ford and the Corporation for  
8 the sale of the Bob Lewis dealership to the former.

9 40. On or about July 10, 2007, the Corporation/the Bob Lewis dealership closed  
10 its service department and directed its service business to Capitol Ford based on the  
11 representations of Ford and Capitol Ford as to the impending execution of the asset  
12 purchase agreement and Ford's approval of the buy-sell.

13 41. On or about July 18, 2007, the Corporation again met with Ford Credit to  
14 review the SOT condition, and the terms of the buy-sell. Ford Credit and the Corporation  
15 estimated the SOT deficiency to be approximately \$300,000 following the execution of the  
16 asset purchase agreement with Capitol Ford.

17 42. By August 2007, the Corporation had reduced the outstanding sum owed to  
18 Ford Credit on the SOT from approximately \$700,000 to \$350,000.

19 43. On or about August 1, 2007, the Corporation again met with Ford Credit (i.e.,  
20 Mr. Lewis) to review the SOT condition. For the first time, Mr. Ward threatened to seize  
21 the inventory and assets of the Corporation. However, the Corporation reminded Ford  
22 Credit of the imminency of the execution of the asset purchase agreement by and  
23 between the Corporation and Ford Credit.

24 44. On or about August 1, 2007, the Court entered the default of  
25 Counterclaimants in this action. Counterclaimants had failed to answer Ford Credit's  
26 complaint based on the representations of Ford and Ford Credit that no litigation would  
27 occur during the pendency of Ford's approval of the buy-sell and the negotiations  
28 concerning the asset purchase agreement.

1           45.     On or about August 2, 2007, the Court granted Ford Credit's application for a  
2 writ of possession and for a temporary restraining order.

3           46.     On or about August 13, 2007, Capitol Ford informed the Corporation that it  
4 would not be purchasing the Bob Lewis dealership. By letter dated August 15, 2007,  
5 Capitol Ford indicated that its decision was independent of Ford and Ford Credit, and  
6 resulted from the litigation between Ford Credit and Counterclaimants as to the  
7 outstanding SOT and capital loan amount.

8           **E.     VOLUNTARY RESIGNATION OF THE BOB LEWIS DEALERSHIP**

9           47.     On or about August 16, 2007, the Corporation voluntarily resigned its  
10 franchise agreement with Ford (i.e., the Lincoln and Mercury Sales and Service  
11 Agreement dated January 12, 2004, and agreements related thereto). Under the terms of  
12 the voluntarily resignation, Ford agreed to purchase certain assets of the Bob Lewis  
13 dealership (including the dealership's vehicles and other inventory), and agreed to turn  
14 over the inventory and/or payments therefor to Ford Credit in partial settlement of the  
15 Corporation's outstanding debt.

16          48.     Immediately thereafter (or on or about August 16, 2007), Lewis met with Mr.  
17 Ward (i.e., Ford Credit) to provide Ford Credit with notice that the Corporation was  
18 voluntarily resigning the Bob Lewis dealership to Ford.

19          49.     Ford's acceptance of the Corporation's voluntary resignation of the Bob  
20 Lewis dealership was conditioned on the Corporation's execution of a general release.  
21 Accordingly, on or about August 16, 2007, Lewis executed the general release provided  
22 by Ford on behalf of the Corporation. Under the terms of the general release, the  
23 Corporation did not agree to waive unknown claims against Ford or claims existing after  
24 August 16, 2007. In addition, the general release did not waive Ford's obligations to the  
25 Bob Lewis dealership under the Lincoln and Mercury Sales and Service Agreements.

26          50.     On or about August 17, 2007, Ford Credit executed its writ of possession  
27 despite its knowledge of the Corporation's voluntary resignation of the Bob Lewis  
28 dealership. The Corporation immediately telephoned Ford (i.e., Mr. Sheehan), who

1 indicated that Ford Credit had acted erroneously given the Corporation's voluntary  
2 resignation of the Bob Lewis dealership. Ford indicated that it was too late to stop Ford  
3 Credit from executing the writ, but assured the Corporation that it would honor the terms  
4 of the voluntary resignation and would resolve the outstanding issues with Ford Credit.

5 51. By letter dated August 20, 2007, Ford Credit informed the Corporation that  
6 it would not begin to sell the Corporation's vehicle inventory, equipment, parts inventory,  
7 and other property not repurchased by Ford and subject to Ford's security agreement, at  
8 private sale, until "sometime after August 30, 2007," effectively providing the Corporation  
9 with a ten (10) day redemption period.

10 52. On or before August 30, 2007, Sunnyvale Lincoln Mercury committed to  
11 acquire eight (8) of the Corporation's motor vehicles. On that same date, the Corporation  
12 notified Ford Credit, but was informed that Ford Credit had already begun to sell and had  
13 sold the inventory sought to be acquired by Sunnyvale Lincoln Mercury at private auction.

14 53. On or about September 26, 2007, Ford accepted the Corporation's voluntary  
15 termination of the Bob Lewis dealership, and acknowledged a termination date of  
16 September 25, 2007.

## 17 **FIRST CAUSE OF ACTION**

### 18 **(BREACH OF CONTRACT AS TO CAPITOL FORD AND FORD CREDIT)**

19 54. Counterclaimants incorporate by reference the allegations stated above in  
20 paragraphs 1 through 53, inclusive, as if fully set forth herein.

21 55. On or before June 22, 2007, Capitol Ford and the Corporation entered into  
22 a written contract or letter agreement. A copy of said contract is attached hereto as  
23 Exhibit A, and is incorporated herein by this reference.

24 56. The Corporation has at all times performed the terms of the contract as so  
25 specified therein.

26 57. Capitol Ford has failed and refused to perform its obligations under the  
27 contract in that Capitol Ford has refused to purchase the Bob Lewis dealership under the  
28 terms set forth in the written contract or letter agreement, Exhibit A hereto.

1           58.     Capitol Ford's failure and refusal to perform its obligations under the contract  
2 has resulted in significant monetary losses to Counterclaimants. Specifically, the  
3 Corporation directed its service business to Capitol Ford in reliance on the terms of the  
4 contract attached hereto as Exhibit A. Capitol Ford knew or should have known that the  
5 Corporation would rely on its promise to purchase the Bob Lewis dealership and that the  
6 promise would induce the Corporation to direct its service business to Capitol Ford.

7           59.     Based on Capitol Ford's failure and refusal to perform its obligations under  
8 the contract, Exhibit A hereto, the Corporation was left with no alternative but to voluntarily  
9 surrender the Bob Lewis dealership at great monetary loss to Counterclaimants. Such  
10 monetary losses partially resulted from the subsequent ineligibility for repurchase by Ford  
11 of certain Ford Lincoln Mercury vehicles held by the Corporation.

12           60.     On or about December 12, 2003, the Corporation and Ford Credit entered  
13 into an Automotive Wholesale Plan Application for Wholesale Financing and Security  
14 Agreement ("Wholesale Agreement") under which the Corporation established a  
15 wholesale line of credit to finance Ford motor vehicles, and other inventory, equipment  
16 and goods. Under the terms of the Wholesale Agreement, Ford Credit covenanted that it  
17 would provide the Corporation "at least five days' written notice or such notice as required  
18 by law" before selling, at private or public sale, inventory seized from the Corporation as  
19 the result of an event of default.

20           61.     By writing dated August 20, 2007, and pursuant to the Wholesale  
21 Agreement, and Lewis's conversations with Ford Credit (i.e., Mr. Ward) and Ford (i.e., Mr.  
22 Sheehan), the Corporation was of the understanding that Ford Credit would not begin to  
23 auction the inventory of the Bob Lewis dealership until some time "after August 30, 2007."

24           62.     Ford Credit, however, auctioned the Corporation's vehicles and inventory  
25 prior to or on the date of August 30, 2007, in breach of its contractual agreement with the  
26 Corporation as set forth in the Wholesale Agreement and as memorialized in Ford Credit's  
27 August 20, 2007 letter. Ford Credit's failure to adhere to its contractual obligations has  
28 resulted in substantial monetary losses to Counterclaimants. Specifically, the Corporation

1 had secured private buyers for eight (8) of its vehicles, which would have resulted in a  
2 greater setoff to the debt owed by the Corporation to Ford Credit than that resulting from  
3 Ford Credit's private auction.

4 WHEREFORE, Counterclaimants pray for judgment against Counterdefendants  
5 Ford, Ford Credit, and Capitol Ford (collectively, "Counterdefendants"), and each of them,  
6 as hereinafter set forth.

7 **SECOND CAUSE OF ACTION**  
8 **(BREACH OF IMPLIED COVENANT OF GOOD FAITH**  
9 **AND FAIR DEALING AS TO COUNTERDEFENDANTS**  
10 **CAPITOL FORD, FORD, AND FORD CREDIT)**

11 63. Counterclaimants incorporate by reference the allegations stated above in  
12 paragraphs 1 through 62, inclusive, as if fully set forth herein.

13 64. On or about June 8, 2007, Ford breached the implied covenant of good faith  
14 and fair dealing with respect to the Lincoln and Mercury Sales and Service Agreements  
15 executed by and between the Corporation and Ford in or about December 2003. Implied  
16 in these agreements was a covenant by Ford not to do anything which would deprive the  
17 Corporation from the benefits of these contracts or otherwise injure the Corporation, to act  
18 in good faith in executing and performing the terms of these contracts, and to do  
19 everything that the contracts presuppose that Ford will do to accomplish the purposes of  
20 these contracts. On or about June 8, 2007, Ford unilaterally, unjustifiably, and unlawfully  
21 imposed a facility upgrade requirement on the Corporation, with full knowledge of the  
22 Corporation's financial difficulties, to hamper the Corporation's ability to carry on its  
23 business. Counterclaimants are informed and believe that Ford imposed the facility  
24 upgrade requirement to force the Corporation to either sell or surrender the Bob Lewis  
25 dealership.

26 65. On or about June 20, 2007, Ford breached the implied covenant of good  
27 faith and fair dealing with respect to the Lincoln and Mercury Sales and Service  
28 Agreements executed by and between the Corporation and Ford in or about December

1 2003. On or about that date, Ford unilaterally, unlawfully, and unjustifiably acted to  
2 prevent the Corporation from selling the Bob Lewis dealership to Mr. Del Grande by  
3 imposing a \$500,000 facility upgrade requirement on the latter. Ford imposed this  
4 condition to prevent the sale of the Bob Lewis dealership to Mr. Del Grande so as to  
5 ensure the sale of the dealership to Capitol Ford in which Ford has an ownership interest.  
6 Significantly, Ford imposed only a \$200,000 to \$250,000 facility upgrade requirement on  
7 Capitol Ford, and agreed to share the cost of the upgrade with Capitol Ford. Such an  
8 arrangement was not offered to Mr. Del Grande.

9 66. On or about August 13, 2007, Ford breached the implied covenant of good  
10 faith and fair dealing with respect to the Lincoln and Mercury Sales and Service  
11 Agreements executed by and between the Corporation and Ford in or about December  
12 2003. In particular, Ford encouraged the Corporation to sell the Bob Lewis dealership to  
13 Capitol Ford, and assured the Corporation that the buy-sell approval process would be  
14 expedited. Ford made these misrepresentations to secure the Corporation's service  
15 business for the benefit of Capitol Ford and Ford (by virtue of its ownership interest in  
16 Capitol Ford), and to secure the sale of the Corporation to Capitol Ford. Ford also made  
17 these misrepresentations to delay the Corporation's voluntary surrender of the Bob Lewis  
18 dealership so as to further limit and reduce Ford's inventory repurchase obligations to the  
19 Corporation.

20 67. On or about August 13, 2007, Capitol Ford breached the implied covenant of  
21 good faith and fair dealing with respect to the letter agreement or contract executed by  
22 and between the Corporation and Capitol Ford on or before June 22, 2007 (Exhibit A  
23 hereto). Implied in this agreement was a covenant by Capitol Ford not to do anything  
24 which would deprive the Corporation from the benefits of this contract or otherwise injure  
25 the Corporation, to act in good faith in executing and performing the terms of this contract,  
26 and to do everything that the contract presupposes that Ford will do to accomplish its  
27 purposes. On or about August 13, 2007, Capitol Ford refused to purchase the Bob Lewis  
28 dealership from the Corporation contrary to its earlier representations, which resulted in



1 the Corporation's transfer of its service business to Capitol Ford on or about July 10,  
2 2007.

3 68. On or about August 17, 2007, Ford Credit breached the implied covenant of  
4 good faith and fair dealing with respect to the Wholesale Agreement and the contracts  
5 related thereto. Implied in these agreements was a covenant by Ford not to do anything  
6 which would deprive Counterclaimants from the benefits of these contracts or otherwise  
7 injure Counterclaimants, to act in good faith in executing and performing the terms of  
8 these contracts, and to do everything that the contracts presuppose that Ford will do to  
9 accomplish the purposes of these contracts. Despite its knowledge of the Corporation's  
10 voluntary resignation of the Bob Lewis dealership on or about August 17, 2007, Ford  
11 Credit nonetheless proceeded to execute on the writ of possession. Thereafter, Ford  
12 Credit auctioned the vehicles seized from the Bob Lewis dealership prior to the contractual  
13 time provided for the Corporation to redeem those vehicles, resulting in substantial  
14 monetary losses to the Corporation.

15 69. In committing the acts described herein, Counterdefendants were guilty of  
16 oppression, fraud, or malice. Consequently, Counterclaimants are entitled to an award of  
17 exemplary or punitive damages.

18 WHEREFORE, Counterclaimants pray for judgment against Counterdefendants,  
19 and each of them, as hereinafter set forth.

20 **THIRD CAUSE OF ACTION**

21 **(FRAUD AS TO COUNTERDEFENDANTS**

22 **FORD CREDIT, FORD, AND CAPITOL FORD)**

23 70. Counterclaimants incorporate by reference the allegations stated above in  
24 paragraphs 1 through 69, inclusive, as if fully set forth herein.

25 71. Capitol Ford (in which Ford has an ownership interest) contracted to  
26 purchase the Bob Lewis dealership by letter agreement dated on or before June 22, 2007.  
27 Capitol Ford subsequently circulated an asset purchase agreement for negotiation by and  
28 between Capitol Ford and the Corporation. Capitol Ford and Ford represented to the

1 Corporation that Capitol Ford would be approved, and would acquire, the Bob Lewis  
2 dealership on the terms specified in the June 22, 2007 letter agreement, Exhibit A hereto.  
3 In addition, Ford (i.e., Mr. Sheehan) represented to Counterclaimants that it would  
4 expedite the buy-sell approval process. In so representing, Capitol Ford and Ford urged  
5 the Corporation/the Bob Lewis dealership to direct its service business (i.e., the service of  
6 Ford Lincoln Mercury vehicles) to Capitol Ford. In reliance thereupon, the Corporation/the  
7 Bob Lewis dealership directed its service business to Capitol Ford.

8 72. On August 20, 2007, Ford Credit represented to the Corporation that it would  
9 honor the terms of the finance documents entered by and between the Corporation and  
10 Ford Credit, whereby the Corporation would have a ten (10) day redemption period to  
11 secure buyers for the inventory of the Bob Lewis dealership to repay the outstanding debt  
12 owed by the Corporation. Prior to said ten (10) day period, Ford Credit auctioned and sold  
13 the vehicle inventory of the Bob Lewis dealership at private sale, resulting in substantial  
14 monetary losses to the Corporation, which had obtained a private buyer to purchase eight  
15 (8) of the dealership's vehicles. The Corporation's negotiated deal with the private buyer  
16 (i.e., Sunnyvale Lincoln Mercury) would have enabled it to reduce its debt to Ford Credit  
17 by an amount far greater than the debt offset obtained from the proceeds of the private  
18 sale/auction effectuated by Ford Credit.

19 73. When Counterdefendants made the oral and written representations  
20 described above, these misrepresentations were made by Counterdefendants with the  
21 intent to defraud and deceive Counterclaimants.

22 74. In making the misrepresentations detailed above, Ford and Capitol Ford  
23 intended to induce Counterclaimants to direct the Corporation's service business to  
24 Capitol Ford in which Ford has an ownership interest to the monetary benefit of Capitol  
25 Ford and Ford, and at the expense of the Corporation.

26 75. In making the misrepresentations detailed above, Ford intended to induce  
27 Counterclaimants to refrain from or to delay the Corporation's resignation of the Bob  
28 Lewis dealership so as to reduce or limit Ford's inventory repurchase obligations to the

1 Corporation.

2 76. In making the misrepresentations detailed above, Ford Credit intended to  
3 prevent the Corporation from securing private buyers of the Corporation's inventory so as  
4 to benefit Ford Credit to the detriment of Counterclaimants.

5 77. As a direct and proximate result of the misrepresentations of  
6 Counterdefendants, Counterclaimants have sustained substantial monetary damages.

7 78. In making the misrepresentations described herein, Counterdefendants were  
8 guilty of oppression, fraud, or malice. Consequently, Counterclaimants are entitled to an  
9 award of exemplary or punitive damages.

10 WHEREFORE, Counterclaimants pray for judgment against Counterdefendants,  
11 and each of them, as hereinafter set forth.

12 **FOURTH CAUSE OF ACTION**  
13 **(INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS AS TO**  
14 **COUNTERDEFENDANTS FORD AND FORD CREDIT)**

15 79. Counterclaimants incorporate by reference the allegations stated above in  
16 paragraphs 1 through 78, inclusive, as if fully set forth herein.

17 80. The Corporation had a valid and existing contract with Capitol Ford under  
18 which Capitol Ford agreed to acquire the Bob Lewis dealership, and inventory thereof.  
19 The contract was entered into on or before June 22, 2007. A copy of the contract is  
20 attached hereto as Exhibit A and is incorporated herein by this reference.

21 81. Ford and Ford Credit knew of the contract between Capitol Ford and  
22 the Corporation.

23 82. Ford and Ford Credit intentionally induced Capitol Ford to breach its contract  
24 with the Corporation by informing Capitol Ford that Counterclaimants were in severe  
25 financial difficulty, and that Capitol Ford would be required and unable to meet  
26 Counterclaimants' obligations to Ford Credit. Ford and Ford Credit knew these  
27 representations to be untrue.

28 83. As a result of the intentional acts of Ford and Ford Credit, the business

1 relationship between Capitol Ford and the Corporation was disrupted in that Capitol Ford  
2 breached its contractual relationship with the Corporation and refused to purchase the  
3 Bob Lewis dealership.

4 84. The intentional inference of Ford and Ford Credit with the business  
5 relationship between the Corporation and Capitol Ford has directly and proximately  
6 resulted in monetary damages to Counterclaimants in excess of \$350,000.

7 85. In committing the acts described herein, Ford and Ford Credit were guilty of  
8 oppression, fraud, or malice. Consequently, Counterclaimants are entitled to an award of  
9 exemplary or punitive damages.

10 WHEREFORE, Counterclaimants pray for judgment against Ford and Ford Credit,  
11 and each of them, as hereinafter set forth.

12 **FIFTH CAUSE OF ACTION**  
13 **(INTENTIONAL INTERFERENCE WITH PROSPECTIVE**  
14 **ECONOMIC ADVANTAGE AS TO COUNTERDEFENDANTS**  
15 **FORD AND FORD CREDIT)**

16 86. Counterclaimants incorporate by reference the allegations stated above in  
17 paragraphs 1 through 85, inclusive, as if fully set forth herein.

18 87. Counterclaimants were in negotiations with Mr. Del Grande for the sale of  
19 the Bob Lewis dealership to the Del Grande family. The Corporation expected to realize a  
20 net profit of approximately \$350,000 from the sale of the Bob Lewis dealership to Mr. Del  
21 Grande.

22 88. Ford knew of the relationship or the negotiations between the Corporation  
23 and Mr. Del Grande for the sale of the Bob Lewis dealership.

24 89. Ford intentionally disrupted the relationship between the Corporation and Mr.  
25 Del Grande by falsely and unjustifiably imposing a \$500,000 facility renovation  
26 requirement to impede Mr. Del Grande's purchase of the Bob Lewis dealership. Such a  
27 condition was not imposed on Capitol Ford. To the contrary, Ford imposed a much lower  
28 facility renovation requirement upon Capitol Ford and agreed to bear a portion of the cost.

1 Such favorable terms were not offered by Ford to Mr. Del Grande.

2 90. Counterclaimants are informed and believe that Ford mandated the facility  
3 renovation after its awareness of the Corporation's financial difficulties to induce the  
4 Corporation to sell the Bob Lewis dealership to Capitol Ford, in which Ford had and has  
5 an ownership interest via the Dealer Development Program; and to delay the  
6 Corporation's voluntary surrender of the Bob Lewis dealership.

7 91. As a result of Ford's intentional acts, Mr. Del Grande's negotiations with the  
8 Corporation for the purchase of the Bob Lewis dealership stalled and were no longer as  
9 favorable to the Corporation.

10 92. Ford's interference with the business relationship between the Corporation  
11 and Mr. Del Grande has resulted in damages to Counterclaimants in excess of \$350,000.

12 93. Ford Credit was aware of the Corporation's buy-sell with Capitol Ford for the  
13 sale of the Bob Lewis dealership. Ford Credit intentionally disrupted the relationship  
14 between Capitol Ford and the Corporation by misrepresenting the extent of the  
15 Corporation's financial obligations to Ford Credit, resulting in Capitol Ford's failure to  
16 purchase the Bob Lewis dealership and resulting in substantial monetary losses to the  
17 Corporation.

18 94. In committing the acts described herein, Ford and Ford Credit were guilty of  
19 oppression, fraud, or malice. Consequently, Counterclaimants are entitled to an award of  
20 exemplary or punitive damages.

21 WHEREFORE, Counterclaimants pray for judgment against Ford and Ford Credit,  
22 and each of them, as hereinafter set forth.

23 **SIXTH CAUSE OF ACTION**

24 **(VIOLATION OF 15 U.S.C. § 1222 AS TO COUNTERDEFENDANTS**

25 **FORD, FORD CREDIT, AND CAPITOL FORD)**

26 95. Counterclaimants incorporate by reference the allegations stated above in  
27 paragraphs 1 through 94, inclusive, as if fully set forth herein.

28 96. Ford Credit and Capitol Ford act for and are under the control of Ford in

1 connection with the distribution of Ford Lincoln Mercury automotive vehicles within the  
2 meaning of 15 U.S.C. § 1221, subdivision (a).

3 97. By committing the acts detailed in this counterclaim, Counterdefendants  
4 failed to act in good faith in performing or complying with the terms of its agreements (i.e.,  
5 franchise agreements and contracts related thereto) with the Corporation in violation of  
6 the Dealer's Day In Court Act (15 U.S.C. § 1221, et seq.).

7 98. Consequently, Counterclaimants are entitled to monetary damages and the  
8 costs incurred in pursuing the instant suit/counterclaim.

9 WHEREFORE, Counterclaimants pray for judgment against Counterdefendants,  
10 and each of them, as hereinafter set forth.

11 **PRAYER**


12 WHEREFORE, Counterclaimants pray for judgment against Counterdefendants as  
13 follows:

- 14 1. For monetary damages in an amount to be determined at trial;  
15 2. For prejudgment interest on the monetary damages awarded at the legal  
16 rate;  
17 3. For punitive damages as determined at trial;  
18 4. For reasonable attorney's fees;  
19 5. For costs of suit; and  
20 6. For such other and further relief as the Court deems just and proper.

21  
22  
23 Dated: December 4, 2007

Respectfully submitted,

RANKIN, LANDSNESS, LAHDE,  
SERVERIAN & STOCK

24  
25  
26 By:   
27 David J. Stock, Attorneys for  
28 for Defendants LEWIS FAMILY  
ENTERPRISES, INC. and  
STEVEN ROBERT LEWIS

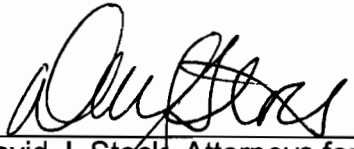
**DEMAND FOR JURY TRIAL**

Counterclaimants LEWIS FAMILY ENTERPRISES, INC., dba BOB LEWIS  
LINCOLN MERCURY, and STEVEN ROBERT LEWIS hereby demand a trial by jury.

Dated: December 4, 2007

Respectfully submitted,

RANKIN, LANDSNESS, LAHDE,  
SERVERIAN & STOCK

By:   
David J. Stock, Attorneys for  
for Defendants LEWIS FAMILY  
ENTERPRISES, INC. and  
STEVEN ROBERT LEWIS



**Exhibit A**

**New Vehicles:** Buyer will purchase new 2007 and 2008 Lincoln Mercury vehicles at the Dealer Net Cost, Which is less any factory rebates or allowances that the dealership has received or will receive on these vehicles. Any equipment added by the dealership will be purchased at dealer cost.

**Pre-Owned Vehicles:** Buyer will purchase all, none or some at a price to be negotiated between a representative of the Seller and a representative of the Buyer.

**Service Vehicles:** Buyer will purchase all, none or some at a price to be negotiated between a representative of the Seller and a representative of the Buyer.

**Parts and Accessories Inventory:** Buyer will purchase at current dealer net cost based on inventory of parts by an independent inventory service. Buyer has no obligation to purchase damaged, used, obsolete parts, parts not used on Lincoln Mercury Division vehicles or parts kits that have components missing. ~~Seller and Buyer will share~~ <sup>pay</sup> the cost of the inventory service equally. (Se)

**Equipment:** Buyer will purchase from Seller selected tools and equipment related to Lincoln Mercury franchise as mutually agreed upon. The purchase price will be determined by the independent appraisal conducted by a licensed dealership appraisal service, or by any other means agreed to by the Seller and Buyer. ~~Seller and Buyer will share~~ <sup>pay</sup> the cost of the appraisal equally. (Se)

**Goodwill:** Seller will receive a total of \$25,000 Goodwill for the use of the customer sales lists, customer service files, internet website, business trade name and the right to handle customer lease turn-ins etc.

**Consulting Fee:** Mr. Steve Lewis will receive \$25,000 as payment for performing a consulting services fee. He will advise and council Capitol Expressway Ford with Lincoln Mercury Franchise process and procedure for a period not to exceed 90 days. The amount of \$25,000 will be paid at the close of escrow.

***The attached offer is good till C.O.B. Friday, June, 22, 2007.***

Sergio Madrigal  
President  
Capitol Expressway Ford  
919 Capitol Expressway Auto Mall  
San Jose, CA. 95136

Acceptance Signature

Steve Lewis  
President  
Bob Lewis Lincoln Mercury  
911 Capitol Expressway Auto Mall  
San Jose, CA. 95136

Acceptance Signature